

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

MICHAEL DEMIL,

Plaintiff,

vs.

Case No. 2013-3468-CK

RMD PROPERTIES, LTD,

Defendant.

OPINION AND ORDER

Plaintiff has filed a “motion for clarification and partial reconsideration of the Court’s June 5, 2014 Amended Order.” Defendant has filed a response and requests that the motion be denied.

Factual and Procedural History

On August 28, 2013, Plaintiff filed his complaint in the instant matter seeking to dissolve Defendant and requested that the Court (1) enter a judgment ordering Defendant to liquidate its assets, pay its creditors, effect an equitable distribution to the shareholders and dissolve the entity and (2) appoint a receiver for the purposes of selling and/or auctioning off Defendant’s assets, collecting rent from Defendant’s tenants, pursuing any and all claims Defendant has, and liquidating and dissolving Defendant’s assets.

In September 2013, Defendant filed its answer to the complaint and filed its own motion for dissolution in which it requested that it be dissolved under the Court’s supervision. After conducting a hearing in connection with Defendant’s motion the Court requested that the parties each formulate a proposal for dissolving Defendant.

After receiving the parties' proposals the Court entered its June 5, 2014 Amended Order (the "Order") in which it ordered:

- (A) "RMD Properties, Ltd. is hereby dissolved pursuant to MCL 450.1823 as its two directors/shareholders, Plaintiff Michael Demil and Robert Demil, have agreed that they are unable to agree by the requisite vote on material matters respecting the management of RMD Properties, Ltd.'s affairs, which has rendered the company unable to function effectively.
- (B) Gilbert Zook, SRPA, SRA, located at 43231 Shoenherr, Sterling Heights, MI 48313 is hereby appointed as appraiser for the purpose of appraising four of RMD Properties, Ltd.'s parcels of real estate: three parcels commonly known as 53861, 53801 and a fourth parcel, commonly known as 53721, tax parcel 09-08-426-014 (collectively, the "Subject Properties.").
- a. Mr. Zook, as soon as practicable, shall appraise the cumulative fair market sale value and cumulative fair market rental value of the Subject Properties.
- b. After conducting the appraisals, Mr. Zook shall notify the parties, as well as the Court, as to the values.
 - i. Plaintiff shall then have the option to purchase the Subject Properties for the fair market sale value.
 - 1. Plaintiff's right to purchase the Subject Properties is subject to the following restriction: Plaintiff must agree to continue to lease the space currently occupied by RMD Holdings, Ltd. to that entity for one year at the appraised fair market rental rate, and to grant RMD

Holdings, Ltd. two one-year renewal options at the same rental rate.

ii. If Plaintiff declines to purchase the Subject Properties, the Subject Properties will then be sold to Robert Demil for the fair market sale value, subject to the lease restrictions set forth above.

c. The cost of the appraisal shall be assessed to RMD Properties, Ltd., with both of its members sharing equally in the expense.”

On June 26, 2014, Plaintiff filed its instant motion for clarification and/or reconsideration of the Order. Defendant has filed a response and requests that the motion be denied.

Standard of Review

Motions for reconsideration are provided for in MCR 2.119. A motion for reconsideration is addressed to the sound discretion of the trial court. *In re: Beglinger Trust*, 221 Mich App 273, 279; 561 NW2d 130 (1997). Such a motion is not to be granted unless filed within 21 days of the challenged decision. MCR 2.119(F)(1). The moving party must demonstrate a palpable error by which the Court and the parties have been misled and show a different disposition of the motion must result from correction of the error. MCR 2.119(F)(3). A motion for reconsideration which merely presents the same issue(s) ruled upon by the Court, either expressly or by reasonable implication, will not be granted. *Id.* The purpose of MCR 2.119(F) is to allow a trial court to immediately correct any obvious mistakes it may have made in ruling on a motion, which would otherwise be subject to correction on appeal but at a much greater expense to the parties. *Bers v Bers*, 161 Mich App 457, 462; 411 NW2d 732 (1987). Unless the Court directs otherwise, there is no oral argument on the motion for reconsideration. MCR 2.119(F)(2).

Arguments and Analysis

In his motion, Plaintiff states that clarification and reconsideration of the Order is needed regarding four issues. The Court will address each issue in turn.

Plaintiff first asserts that neither party wants to purchase Defendant's property at 6626 N. Dort Highway, Flint, MI ("Flint Property") and as a result requests that the Flint Property be auctioned. Defendant does not object to Plaintiff's request to auction the Flint Property. Consequently, the Court will grant this portion of Plaintiff's motion.

Next, Plaintiff requests that the Court alter the requirement that it must allow RMD Holdings, Ltd. to continue to rent a portion of the Subject Properties at a fair market rental rate, and to grant RMD Holdings, Ltd. two one-year renewal options at the same rental rate. The property at issue is actually occupied by Nationwide Construction, an assumed name of RMD Holdings, Ltd. Specifically, Plaintiff requests that the Court condition the above-referenced requirement on (1) Nationwide paying all outstanding rent, (2) Plaintiff and Nationwide mutually agreeing on the terms and conditions of a written lease agreement, (3) If a written lease cannot be formed, that a receiver be appointed to write and negotiate the lease, and (4) The lease should be conditioned on Nationwide still conducting business.

With respect to the 4th request, the request is based on the Court's previously vacated order dissolving RMD Holdings, Ltd. Therefore, Plaintiff's position is without merit.

With respect to the outstanding rental payments, such payments would be payable to Defendant rather than Plaintiff and any right to collect such payments would fall within the winding up process of Defendant. As such, the Court is not persuaded that payment of the four outstanding payments should be a condition precedent on Plaintiff's requirements under the Order.

With respect to Plaintiff's second and third requests, the Court is not convinced that a written lease is necessary. The Order provides that RMD Holdings, LTD. (or in this case Nationwide) will have the option to lease the property at issue for the fair market rental rate. If Nationwide elects to rent the property but does not meet its end of the bargain by failing to pay rent, or by causing damage to the property, Plaintiff will certainly have recourse available to it under the applicable statute(s). Up until the filing of the instant motion Plaintiff had not requested a written lease and has not demonstrated why a written lease is needed. Moreover, if Plaintiff is not satisfied with the requirements imposed on his opportunity to purchase the Subject Properties he has the option of declining to purchase the Subject Properties. For these reasons, the Court is convinced that Plaintiff's second and third request must be denied.

In his motion, Plaintiff also requests that the Court appoint Mr. Zook to appraise the past rental value of the property to be rented and order Nationwide to pay the difference between what it had paid and the appraised value. The Court is convinced that Plaintiff's request must be denied. Nationwide has paid the agreed-upon rent for all but 4 months. While Plaintiff may not be satisfied with the rental rate Nationwide was charged in the past, Plaintiff has not provided any grounds upon which the Court should, or could, amend the rent charged in the past and order a non-party to pay the difference. Consequently, Plaintiff's request is denied.

Finally, Plaintiff requests that a phase II environmental report be prepared, at Defendant's cost, based on his concern that there may be environmental conditions which lower the value of the Subject Properties below the appraised value. As stated above, Plaintiff is not required to purchase the Subject Properties and if he is concerned that the fair market value may be too high Plaintiff has the option of declining the purchase the Subject Properties. However, the Court is not persuaded to order additional testing in order to help Plaintiff make his decision.

Conclusion

For the reasons discussed above, Plaintiff's "motion for clarification and partial reconsideration of the Court's June 5, 2014 Amended Order" is GRANTED, IN PART, and DENIED, IN PART. Specifically, Plaintiff's request that the Flint Property be auctioned is GRANTED. If the parties are unable to agree on the manner in which the Flint Property is to be auctioned they shall submit competing proposals on that issue no later than November 30, 2014. The remainder of Plaintiff's motion is DENIED.

In addition, the parties shall contact the Court to schedule a status conference to address the remaining issues in this matter.

Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order neither resolves the last claim nor closes the cases.

IT IS SO ORDERED.

/s/ John C. Foster
JOHN C. FOSTER, Circuit Judge

Dated: November 12, 2014

JCF/sr

Cc: *via e-mail only*
Jonathan B. Eadie, Attorney at Law, jbelaw@hotmail.com
Benjamin J. Aloia, Attorney at Law, aloia@aloiaandassociates.com
Rogue Tyson, Attorney at Law, rtyson@nationwidecos.com
Lawrence M. Scott, Attorney at Law, lscott@orlaw.com